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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Fifty-third session
Working Group on Minorities
Seventh session
14-18 May 2001

PROVISIONAL AGENDA

Note by the Secretary-General

1. Adoption of the agenda.

2. Organization of work.

3. (a) Reviewing the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

   (b) Examining possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments;

   (c) Recommending further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

4. The future role of the Working Group.

5. Other matters.

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Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-third session
Working Group on Minorities
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ANNOTATIONS TO THE PROVISIONAL AGENDA

Note by the Secretary-General

Introduction

1. The establishment of the Working Group on Minorities was recommended by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in its resolution 1994/4 of 19 August 1994 and authorized by the Commission on Human Rights in its resolution 1995/24 of 3 March 1995, in which it called upon the Sub-Commission to examine, as a matter of priority, ways and means to promote and protect effectively the rights of persons belonging to minorities as set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992. For that purpose it authorized the Sub-Commission to establish an inter-sessional working group. This resolution was subsequently endorsed by the Economic and Social Council in its resolution 1995/31 of 25 July 1995. By decision 1998/246 of 30 July 1998, the Economic and Social Council extended the mandate of the Working Group with a view to its holding one session of five working days annually.

2. The seventh session of the Working Group is scheduled to be held at the United Nations Office at Geneva from 14 to 18 May 2001.

1. Adoption of the agenda

3. The provisional agenda for the seventh session of the Working Group contained in document E/CN.4/Sub.2/AC.5/2001/1 includes items on the promotion of the rights of persons belonging to minorities as set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Commission on Human Rights, in its resolution 1995/24, requested the Working Group to give priority consideration to the three main items contained in paragraph 9 of that resolution, namely:

(a) To review the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(b) To examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments;

(c) To recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

4. In accordance with the above-mentioned paragraph, the Working Group decided to consider the issues in the following order at its present session: reviewing the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; examining possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments; recommending further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities; the future role of the Working Group; and other matters.

2. Organization of work

5. At its sixth session, the Working Group decided to rationalize the agenda and that the number of meetings for each agenda item would be as follows: three meetings for agenda item 3 (a); three meetings for agenda item 3 (b); and three meetings for agenda item 3 (c) (see E.CN.4/Sub.2/2000/27, para. 115)

3 (a) Reviewing the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Manual on Minorities

6. The Working Group decided that the final text of the Commentary on the Declaration should be submitted as the final commentary prepared by the Chairperson-Rapporteur, Mr. Asbjørn Eide. This is available in document E/CN.4/Sub.2/AC.5/2001/2. The Working Group also decided that the commentary would be published in a manual to be prepared on regional and international mechanisms and procedures for minority protection. In paragraph 11

of Commission on Human Rights resolution 2000/52, the Commission took note of the Working Group's work on a manual. Moreover, the Sub-Commission, in paragraph 4 of its resolution 2000/16 endorsed the recommendation of the Working Group that the revised commentary prepared by its Chairperson be published as part of a manual containing the Declaration and an overview of relevant procedures and mechanisms of regional and international organizations.

Information gathering on minorities

7. At its sixth session, the Working Group decided to encourage further work on databases (see E/CN.4/Sub.2/2000/27, para. 27). Information on the developments in that regard will be presented to the Working Group at its seventh session, including a demonstration of information that might be included in new Web site pages for the OHCHR Web site.

3 (b) Examining possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments

and

3 (c) Recommending further measures, as appropriate, for the promotion and protection of persons belonging to national or ethnic, religious and linguistic minorities

Development of regional networks and promoting regional cooperation

8. At its sixth session, the Working Group decided to encourage the further development of regional networks and studies regarding the implementation of the Declaration (see E/CN.4/Sub.2/2000/27, para. 116). For that purpose it recommended that one seminar be held in the Asian and Pacific region, one in the Americas focusing, in particular, on the situation of the Afro-American minorities, and one seminar be held in Africa as a follow-up to the Arusha seminar held in May 2000. This recommendation was endorsed by the Sub-Commission in paragraph 8 of its resolution 2000/16.

9. A follow-up regional workshop on multiculturalism in Africa was organized in Kidal, Mali in January 2001. The report of the workshop is contained in document E/CN.4/Sub.2/AC.5/2001/3. Participants at that Seminar requested that the paper prepared by Samia Slimane on the African regional legal framework be made available to the Working Group on Minorities and the Working Group on Indigenous Populations in all working languages. Accordingly, it is being made available in document E/CN.4/Sub.2/AC.5/2001/WP.2.

Right to effective participation of minorities in the society of which they form a part

10. The theme selected by the Working Group for in-depth discussion at its seventh session is "the right to effective participation of minorities in the society of which they form a part" (see E/CN.4/Sub.2/2000/7, para. 115). The Working Group also decided that special attention

under that theme would be given to an examination of integrative and autonomist approaches to minority protection. For that purpose working and conference room papers were to be prepared on relevant jurisprudence at the regional and global levels and on selected models of integrative and autonomist solutions.

11. At its sixth session, the Working Group also entrusted Mr. Bengoa with the task of preparing a paper on autonomy models in the Americas (E/CN.4/Sub.2/AC.5/2001/WP.1); Mr. Kartashkin with the task of ensuring that a study was prepared on the use of autonomy approaches in the Russian Federation (E/CN.4/Sub.2/AC.5/2001/WP.3); and Mr. Eide with that of preparing a paper on cultural or personal autonomy (E/CN.4/Sub.2/AC.5/2001/WP.4). The delegation of Finland indicated its willingness to have a study prepared on autonomy arrangements in Finland (Aaland Islands model and Saami cultural autonomy). Mr. Hadden was entrusted with the task of preparing a study on integrative approaches to minority protection. These papers will be issued as documents E/CN.4/Sub.2/AC.5/2001/WP.5 and WP.6, respectively. In addition, the Working Group will have before it the "Lund recommendations on the effective participation of national minorities in public life", submitted by John Packer, Director, Office of the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe (OSCE) (E/CN.4/Sub.2/AC.5/2001/WP.7). Several academics have submitted other conference room papers relating to this agenda item.

4. The future role of the Working Group

12. At its sixth session the Working Group discussed under this heading: further restructuring of the agenda to achieve a more focused approach; themes for the next session; the question of further standard-setting, including an exploration by the Sub-Commission and the Commission on Human Rights of the desirability or otherwise of drafting a convention in this field; and the holding of regional seminars.

World Conference against Racism

13. At its sixth session, the Working Group authorized its Chairman-Rapporteur to prepare a statement to be delivered at the World Conference against Racism, focusing on the relationship between the elimination of racial discrimination and the protection of minorities. At its present session, the Working Group will have before it the text of the statement (E/CN.4/Sub.2/AC.5/2001/WP.8).

5. Other matters

14. Under this item, members of the Working Group may consider a range of issues relating to its mandate and its activities.

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Final text of the

Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

By Asbjørn Eide
Chairperson of the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights

I. INTRODUCTION

1. In 1992, in its resolution 47/135, the United Nations General Assembly proclaimed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Assembly requested that intensified efforts be made to disseminate information on the Declaration and promote understanding thereof.

2. This commentary has been prepared in the context of the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights. It is intended to serve as a guide to the understanding and application of the Declaration. The first draft, prepared by me as Chairman, was submitted to the Working Group on Minorities for discussion in 1998[1] and was subsequently circulated to Governments, intergovernmental and non-governmental organizations and individual experts for comments. A compilation of those comments was

submitted to the Working Group at its fifth session in 1999.[2] Additional comments were made during that session and at the sixth session in 2000.[3] The Working Group requested me on that basis to finalize the Declaration and to ensure its publication in the planned United Nations manual on minorities. This final text therefore draws on written work or oral contributions by many experts, Governments and international and non-governmental organizations, and thus takes into account a broad body of opinion. The ultimate responsibility for its content rests, however, with me as its main author.

II. PURPOSES OF THE DECLARATION: ADVANCING HUMAN RIGHTS AND THE PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS

3. The purposes of the Declaration, as set out in the General Assembly resolution 47/135 and the preamble to the Declaration, is to promote more effective implementation of the human rights of persons belonging to minorities and more generally to contribute to the realization of the principles of the Charter of the United Nations and of the human rights instruments adopted at the universal or regional level. The Declaration is inspired by article 27 of the International Covenant on Civil and Political Rights. The General Assembly holds that the promotion and protection of the rights of minorities contribute to the political and social stability of the States in which minorities live and contribute to the strengthening of friendship and cooperation among peoples and States.

4. The Declaration builds on and adds to the rights contained in the International Bill of Human Rights and other human rights instruments by strengthening and clarifying those rights which make it possible for persons belonging to minorities to preserve and develop their group identity. The human rights set out in the Universal Declaration of Human Rights must at all times be respected in the process, including the principle of non-discrimination between individuals. The State is obliged to respect and ensure to every person within its territory and subject to its jurisdiction, without discrimination on any ground, including race, ethnicity, religion or national origin, the rights contained in the instruments to which that State is a party.

5. It is in the light of these purposes and principles that the articles of the Minority Declaration must be interpreted.

III. INTERPRETATION OF AND COMMENTS ON THE TITLE AND THE INDIVIDUAL ARTICLES

The title and the scope of the Declaration

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

6. The beneficiaries of the rights under article 27 of the International Covenant on Civil and Political Rights, which has inspired the Declaration, are persons belonging to "ethnic, religious or linguistic minorities". The Declaration on Minorities adds the term "national minorities". That addition does not extend the overall scope of application beyond the groups already covered by article 27. There is hardly any national minority, however defined, that is not also an ethnic

or linguistic minority. A relevant question, however, would be whether the title indicates that the Declaration covers four different categories of minorities, whose rights have somewhat different content and strength. Persons belonging to groups defined solely as religious minorities might be held to have only those special minority rights which relate to the profession and practice of their religion. Persons belonging to groups solely defined as linguistic minorities might similarly be held to have only those special minority rights which are related to education and use of their language. Persons who belong to groups defined as ethnic would have more extensive rights relating to the preservation and development of other aspects of their culture also, since ethnicity is generally defined by a broad conception of culture, including a way of life. The category of national minority would then have still stronger rights relating not only to their culture but to the preservation and development of their national identity.

7. The Declaration does not, in its substantive provisions, make such distinctions. This does not exclude the possibility that in the interpretation and application of the various provisions the needs of the different categories of minorities could be taken into account.

8. Regional European instruments on minority rights use only the concept "national minorities" and do not refer to "ethnic, religious or linguistic minorities". The most important among them are the instruments and documents of the Council of Europe[4] and the Organization for Security and Co-operation in Europe.[5] When applying those instruments it is important to define "national minority", but the same problem does not arise for the 1992 Declaration on Minorities of the United Nations: even if a group is held not to constitute a national minority, it can still be an ethnic, religious or linguistic minority and therefore be covered by the Declaration.

9. This can be important in several respects. In relation to the European regional instruments, some States argue that "national minorities" only comprise groups composed of citizens of the State. Even if that is accepted (at present it is a matter of some controversy), it would not apply to the 1992 Declaration on Minorities because it has a much wider scope than "national minorities". As the 1992 Declaration is inspired by article 27 of the International Covenant on Civil and Political Rights, it may be assumed that the Declaration has at least as wide a scope as that article. In conformity with article 2 of the Covenant, States parties are under an obligation to respect and ensure the application of article 27 to everyone within its territory and under its jurisdiction, whether the person - or group of persons - are citizens of the country or not. This is also the view expressed by the Human Rights Committee in paragraphs 5.1 and 5.2 of its General Comment No. 23 (fiftieth session, 1994). Persons who are not (yet) citizens of the country in which they reside can form part of or belong to a minority in that country.

10. While citizenship as such should not be a distinguishing criterion which excludes some persons or groups from enjoying minority rights under the Declaration, other factors can be relevant in distinguishing between the rights that can be demanded by different minorities. Those who live compactly together in a part of the State territory may be entitled to rights regarding the use of language, and street and place names which are different from those who are dispersed, and may in some circumstances be entitled to some kind of autonomy. Those who have been established for a long time on the territory may have stronger rights than those who have recently arrived.

11. The best approach appears to be to avoid making an absolute distinction between "new" and "old" minorities by excluding the former and including the latter, but to recognize that in the application of the Declaration the "old" minorities have stronger entitlements than the "new".

12. The word "minority" can sometimes be misleading in itself. Outside Europe, and particularly in Africa, countries are often composed of a large number of groups, none of which make up a majority.

13. The relevant factors differ significantly between States. What is required is to ensure appropriate rights for members of all groups and to develop good governance in heterogeneous societies. By good governance is here understood legal, administrative and territorial arrangements which allow for peaceful and constructive group accommodation based on equality in dignity and rights for all and which allows for the necessary pluralism to enable the persons belonging to the different groups to preserve and develop their identity.

14. The Declaration sets out rights of persons belonging to minorities mainly in article 2 and spell out the duties of the States in which they exist in articles 1, 4 and 5. While the rights are consistently set out as rights of individuals, the duties of States are in part formulated as duties towards minorities as groups. This is most clearly expressed in article 1 (see below). While only individuals can claim the rights, the State cannot fully implement them without ensuring adequate conditions for the existence and identity of the group as a whole.

15. The rights of persons belonging to minorities differ from the rights of peoples to self-determination. The rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others. The rights of peoples, on the other hand, are collective rights. While the right of peoples to self-determination is well established under international law, in particular by common article 1 to the two International Covenants on Human Rights, it does not apply to persons belonging to minorities. This does not exclude that persons belonging to an ethnic or national group may in some contexts legitimately make claims based on minority rights and, in another context, when acting as a group, can make claims based on the right of a people to self-determination.

16. Within the United Nations and also within the Organization of American States, a distinction is drawn between the rights of persons belonging to minorities and those of indigenous peoples. The latter have particular concerns which are not properly addressed in the Declaration on Minorities. The main instrument at the global level relating to indigenous peoples is ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which has been ratified by only a small number of States. The draft declaration on the rights of indigenous peoples, adopted by the Working Group on Indigenous Populations and transmitted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1993 to the Commission on Human Rights, is still under consideration by the Commission.

17. Persons belonging to indigenous peoples are of course fully entitled, if they so wish, to claim the rights contained in the instruments on minorities. This has repeatedly been done under article 27 of the International Covenant on Civil and Political Rights. Persons belonging to indigenous peoples have made several submissions under the first optional protocol to that Covenant.

18. That protocol does not generally make it possible to claim the group-oriented rights sought by indigenous peoples, but some modification of that point follows from General Comment No. 23 of the Human Rights Committee (fiftieth session, 1994, para. 7). The Committee noted that, especially in the case of indigenous peoples, the preservation of their use of land resources can become an essential element in the right of persons belonging to such minorities to exercise their cultural rights. Since the indigenous peoples very often have collective rights in land, individual members of the group may be in a position to make claims not only for themselves but for the indigenous group as a whole.

19. Some see a link between the right of persons belonging to minorities to effective political participation and the right of peoples to self-determination. The issue of effective participation is addressed below in the comments on articles 2.2 and 2.3. If participation is denied to a minority and its members, this might in some cases give rise to a legitimate claim to self-determination. If the group claims a right to self-determination and challenges the territorial integrity of the State, it would have to claim to be a people, and that claim would have to be based on article 1 common to the Covenants and would therefore fall outside the Declaration on Minorities. This follows also from article 8, paragraph 4 of the Declaration (see below). The same would apply in other contexts where the collective right to self-determination is claimed. The Declaration neither limits nor extends the rights to self-determination that peoples have under other parts of international law.[6]

20. While the Declaration does not provide group rights to self-determination, the duties of the State to protect the identity of minorities and to ensure their effective participation might in some cases be best implemented by arrangements for autonomy in regard to religious, linguistic or broader cultural matters. Good practices of that kind can be found in many States. The autonomy can be territorial, cultural and local, and can be more or less extensive. Such autonomy can be organized and managed by associations set up by persons belonging to minorities in accordance with article 2.4. But the Declaration does not make it a requirement for States to establish such autonomy. In some cases, positive measures of integration (but not assimilation) can best serve the protection of minorities.

Article 1

1.1 States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity

21. The relationship between the State and its minorities has in the past taken five different forms: elimination, assimilation, toleration, protection and promotion. Under present international law, elimination is clearly illegal. The Declaration is based on the consideration that forced assimilation is unacceptable. While a degree of integration is required in every

national society in order to make it possible for the State to respect and ensure human rights to every person within its territory without discrimination, the protection of minorities is intended to ensure that integration does not become unwanted assimilation or undermine the group identity of persons living on the territory of the State.

22. Integration differs from assimilation in that while it develops and maintains a common domain where equal treatment and a common rule of law prevail, it also allows for pluralism. The areas of pluralism covered by the Declaration are culture, language and religion.

23. Minority protection is based on four requirements: protection of the existence, non-exclusion, non-discrimination and non-assimilation of the groups concerned.

24. The protection of the existence of minorities includes their physical existence, their continued existence on the territories on which they live and their continued access to the material resources required to continue their existence on those territories. The minorities shall neither be physically excluded from the territory nor be excluded from access to the resources required for their livelihood. The right to existence in its physical sense is sustained by the Convention on the Prevention and Punishment of the Crime of Genocide, which codified customary law in 1948. Forced population transfers intended to move persons belonging to minorities away from the territory on which they live, or with that effect, would constitute serious breaches of contemporary international standards, including the Statute of the International Criminal Court. But protection of their existence goes beyond the duty not to destroy or deliberately weaken minority groups. It also requires respect for and protection of their religious and cultural heritage, essential to their group identity, including buildings and sites such as libraries, churches, mosques, temples and synagogues.

25. The second requirement is that minorities shall not be excluded from the national society. Apartheid was the extreme version of exclusion of different groups from equal participation in the national society as a whole. The Declaration on Minorities repeatedly underlines the rights of all groups, small as well as large, to participate effectively in society (arts. 2.2 and 2.3).

26. The third requirement is non-discrimination, which is a general principle of human rights law and elaborated by, inter alia, the International Convention on the Elimination of All Forms of Racial Discrimination, which also covers discrimination on ethnic grounds. The Declaration on Minorities elaborates the principle of non-discrimination in its provision that the exercise of their rights as persons belonging to minorities shall not justify any discrimination in any other field, and that no disadvantage shall result from the exercise or non-exercise of these rights (art. 3).

27. The fourth requirement is non-assimilation and its corollary, which is to protect and promote conditions for the group identity of minorities. Many recent international instruments use the term "identity", which expresses a clear trend towards the protection and promotion of cultural diversity, both internationally and internally within States. Relevant provisions are articles 29 and 30 of the Convention on the Rights of the Child, article 31 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 2 (2) (b) of ILO Convention No. 169, which refers to respect for the social and

cultural identity, customs and traditions and institutions of indigenous peoples, as well as provisions of regional instruments such as those of the Organization on Security and Co-operation in Europe, including its 1990 Copenhagen Conference on the Human Dimension and its 1991 Geneva Meeting of Experts on National Minorities. Another recent instrument in the same direction is the European Framework Convention for the Protection of National Minorities.

28. Minority group identity requires not only tolerance but a positive attitude towards cultural pluralism on the part of the State and the larger society. Not only acceptance but also respect for the distinctive characteristics and contribution of minorities to the life of the national society as a whole are required. Protection of their identity means not only that the State should abstain from policies which have the purpose or effect of assimilating minorities into the dominant culture, but also that it should protect them against activities by third parties which have an assimilatory effect. The language and educational policies of the State concerned are crucial in this regard. Denying minorities the possibility of learning their own language and of receiving instruction in their own language, or excluding from their education the transmission of knowledge about their own culture, history, tradition and language, would be a violation of the obligation to protect their identity.

29. Promotion of the identity of minorities requires special measures to facilitate the maintenance, reproduction and further development of their culture. Cultures are not static; minorities should be given the opportunity to develop their own culture in the context of an ongoing process. That process should be an interaction between the persons belonging to the minority themselves, between the minority and the State, and between the minority and the wider national society. The measures required to achieve this purpose are set out in greater detail in article 4 of the Declaration.

1.2 States shall adopt appropriate legislative and other measures to achieve those ends

30. Article 1.2 requires "appropriate legislative and other measures". Legislation is needed and it must be complemented by other measures in order to ensure that article 1 can be effectively implemented. Both process and content is important here. In terms of process, it is essential that the State consult the minorities on what would constitute appropriate measures. This follows also from article 2.3 of the Declaration. Different minorities may have different needs that must be taken into account. Any differences in policy, however, must be based on objective and reasonable grounds in order to avoid discrimination.

31. "Other measures" include, but are not limited to, judicial, administrative, promotional and educational measures.

32. In general terms, the content of the measures which have to be adopted are set out in the other provisions of the Declaration, particularly articles 2 and 4, which will be discussed below. One set of measures stem directly from article 1.1: States must adopt laws protecting against acts or incitement to acts which physically threaten the existence of groups or threaten their

identity. This obligation also follows from the International Convention on the Elimination of All Forms of Racial Discrimination. Under article 4 of that Convention, States are required to adopt legislative measures intended to protect groups against hatred and violence on racial or ethnic grounds. A comparable obligation is contained in article 20 of the International Covenant on Civil and Political Rights.

Article 2

2.1 Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination

33. Article 27 of the International Covenant on Civil and Political Rights has almost the same language, but the Declaration is more explicit in requiring positive action. Article 27 of the Covenant, requires that persons belonging to the minorities "shall not be denied the right to ...", whereas article 2 of the Declaration of 1992 uses the positive expression "have the right to ...". Article 27 has been interpreted by the Human Rights Committee as requiring more than mere passive non-interference.[7] The Declaration on Minorities makes it clear that these rights often require action, including protective measures and encouragement of conditions for the promotion of their identity (art. 1) and specified, active measures by the State (art. 4).

34. The words "freely and without interference or any form of discrimination", at the end of article 2.1, show that it is not enough for the State to abstain from interference or discrimination. It must also ensure that individuals and organizations of the larger society do not interfere or discriminate.

2.2 Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life

35. The right to participate in all aspects of the life of the larger national society is essential, both in order for persons belonging to minorities to promote their interests and values and to create an integrated but pluralist society based on tolerance and dialogue. By their participation in all forms of public life in their country, they are able both to shape their own destinies and to contribute to political change in the larger society.

36. The words "public life" must be understood in the same broad sense as in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, though much is covered already by the preceding words "cultural, religious, social and economic". Included in "public life" are, among other rights, rights relating to election and to being elected, the holding of public office, and other political and administrative domains.

37. Participation can be ensured in many ways, including the use of minority associations (see also art. 2.4), membership in other associations, and through their free contacts both inside the State and across borders (see art. 2.5).

2.3 Persons belonging to minorities have the right to participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation

38. While article 2.2 deals generally with the right to participation in all aspects of the public life of a society, article 2.3 deals specifically with the right of persons belonging to minorities to effective participation "in decisions ... concerning the minority to which they belong or the regions in which they live". As such decisions have a particular impact on persons belonging to minorities, the emphasis on effective participation is here of particular importance. Representatives of persons belonging to minorities should be involved already from the initial stages of decision-making. Experience has shown that it is of little use to involve them only at the final stages where there is very little room for compromise. Minorities should be involved at the local, national and international levels in the formulation, adoption, implementation and monitoring of standards and policies affecting them.

39. In 1991, the Conference on Security and Co-operation in Europe held a Meeting of Experts on National Minorities in Geneva. The States there assembled noted approaches used with positive results in some of the participating States. These included advisory and decision-making bodies - in particular with regard to education, culture and religion - on which minorities were represented. Also mentioned were assemblies for national minority affairs; local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections. Reference was further made to forms of self-administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis did not apply; and decentralized or local forms of government.[8]

40. In early May 1999, a group of independent experts met in Lund, Sweden to draw up a set of recommendations on the effective participation of national minorities in public life. The recommendations are built upon fundamental principles and rules of international law, such as respect for human dignity, equal rights and non-discrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights.[9] At its fifth session, at the end of May 1999, the Working Group on Minorities of the Sub-Commission adopted a set of recommendations on the same topic.[10]

41. The following commentary draws extensively on these recommendations. The purpose is not to set out only the minimum rights under article 2.3 of persons belonging to minorities, but also to provide a list of good practices which may be of use to Governments and minorities in finding appropriate solutions to issues confronting them.

42. Effective participation provides channels for consultation between and among minorities and Governments. It can serve as a means of dispute resolution and sustain diversity as a condition for the dynamic stability of a society. The number of persons belonging to minorities is by definition too small for them to determine the outcome of decisions in majoritarian democracy. They must as a minimum have the right to have their opinions heard and fully taken

into account before decisions which concern them are adopted. A wide range of constitutional and political measures is used around the world to provide access for minorities to decision-making.

43. The variety in the composition, needs and aspirations of different types of minority groups requires identification and adoption of the most appropriate ways to create conditions for effective participation in each case. The mechanisms chosen have to take into account whether the persons belonging to the minority in question live dispersed or in compactly settled groups, whether the minority is small or large, or an old or a new minority. Religious minorities may also require different types or contexts of participation than ethnic or national minorities. It should be noted, however, that in some cases the religion and ethnicity coincide.

44. Effective participation requires representation in legislative, administrative and advisory bodies and more generally in public life. Persons belonging to minorities, like all others, are entitled to assemble and to form their associations and thereby to aggregate their interests and values to make the greatest possible impact on national and regional decision-making. They are entitled not only to set up and make use of ethnic, cultural and religious associations and societies (see commentary to article 2.4 below), but also to establish political parties, should they so wish. In a well-integrated society, however, many persons belonging to minorities often prefer to be members of or vote for parties which are not organized on ethnic lines but are sensitive to the concerns of the minorities.

45. Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation. Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities. Some forms of preference voting, where voters rank candidates in order of choice, may also facilitate minority representation and promote inter-communal cooperation.

46. Decentralization of powers based on the principle of subsidiarity, whether called self-government or devolved power, and whether the arrangements are symmetrical or asymmetrical, would increase the chances of minorities to participate in the exercise of authority over matters affecting themselves and the entire society in which they live.

47. Public institutions should not, however, be based on ethnic or religious criteria. Governments at local, regional and national levels should recognize the role of multiple identities in contributing to open communities and in establishing useful distinctions between public institutional structures and cultural identities.

48. States should also establish advisory or consultative bodies involving minorities within appropriate institutional frameworks. Such bodies or round tables should be attributed political weight and effectively consulted on issues affecting the minority population.

49. There should be equal access to public sector employment across the various ethnic, linguistic and religious communities.

50. Citizenship remains an important condition for full and effective participation. Barriers to the acquisition of citizenship for members of minorities should be reduced. Forms of participation by resident non-citizens should also be developed, including local voting rights after a certain period of residence and inclusion of elected non-citizen observers in municipal, regional and national legislative and decision-making assemblies.

2.4 Persons belonging to minorities have the right to establish and maintain their own associations

51. Persons belonging to minorities are entitled, in the same way as other members of society, to set up any association they may want,[11] including educational or religious institutions, but their right to association is not limited to concerns related to their cultural, linguistic or religious identity. The right to associate of persons belonging to minorities extends both to national and to international associations. Their right to form or join associations can be limited only by law and the limitations can only be those which apply to associations of majorities: limitations must be those necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of rights and freedoms.

2.5 Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties

52. The right to contacts has three facets, permitting intra-minority contacts, inter-minority contacts, and transfrontier contacts. The right to intra-minority contacts is inherent in the right of association. Inter-minority contacts make it possible for persons belonging to minorities to share experience and information and to develop a common minority platform within the State. The right to transfrontier contacts constitutes the major innovation of the Declaration, and serves in part to overcome some of the negative consequences of the often unavoidable division of ethnic groups by international frontiers. Such contacts must be "free" but also "peaceful". The latter limitation has two aspects: it must not involve the use of violent means or preparation of the use of such means; secondly, the aims must be in conformity with the Declaration and generally with the purposes and principles of the Charter of the United Nations, as set out also in article 8.4 of the Declaration.

Article 3

3.1 Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination

53. The main point here is that persons can exercise their rights both individually and collectively, the most important aspect being the collective exercise of their rights, be it through associations, cultural manifestations or educational institutions, or in any other way. That they

can exercise their rights in community with other members of the group applies not only to the rights contained in the Declaration, but any human right. They shall not be subject to any discrimination as a consequence of exercising their rights. This principle is important, because Governments or persons belonging to majorities are often tolerant of persons of other national or ethnic origins until such time as the latter assert their own identity, language and traditions. It is often only when they assert their rights as persons belonging to a group that discrimination or persecution starts. Article 3.1 makes it clear that they shall not be subjected to discrimination for manifesting their group identity.

3.2 No disadvantage shall result for any person belonging to a minority as a consequence of the exercise or non-exercise of the rights set forth in the present Declaration

54. While article 3.1 provides that persons belonging to minorities shall not be subjected to discrimination for exercising, individually or collectively, their minority rights, article 3.2 makes it clear that they shall also not be disadvantaged in any way for choosing not to belong to the minority concerned. This provision is directed both towards the State and the agencies of the minority group. The State cannot impose a particular ethnic identity on a given person (which is what the apartheid regime in South Africa sought to do) by the use of negative sanctions against those who do not want to be part of that group; nor can persons belonging to minorities subject to any disadvantage persons who on objective criteria may be held to form part of their group but who subjectively do not want to belong to it. While, under conventional law, responsibility for human rights compliance normally rests with the State, the Declaration in this respect implies duties - at least morally - for persons representing minorities. Furthermore, States would be under a duty to prohibit the taking of measures by minorities to impose their particular rules on any person who did not want to be part of the minority concerned and therefore did not want to exercise her or his rights.

Article 4

4.1 States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law

55. Article 4 sets out the State measures that should be taken in order to achieve the purpose of the Declaration and is its most important part, together with article 2, which sets out the rights. While States are generally obliged under international law to ensure that all members of society may exercise their human rights, States must give particular attention to the human rights situation of persons belonging to minorities because of the special problems they confront. They are often in a vulnerable position and have, in the past, often been subjected to discrimination. In order to ensure equality in fact, it may under some circumstances be necessary for the State to take transitional affirmative action, as provided for in article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, which is applicable to ethnic as well as racial minorities, provided these measures do not disproportionately affect the rights of others.

4.2 States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards

56. This paragraph of article 4 calls for more than mere tolerance of the manifestation of different cultures within a State. The creation of favourable conditions requires active measures by the State. The nature of those measures depends on the situation of the minority concerned, but should be guided by the purpose set forth in article 4.2, which is twofold. On the one hand, individual members of the minority shall be enabled to express the traditional characteristics of the group, which may include a right to use their traditional attire and to make their living in their own cultural ways. On the other hand, they shall be enabled, in community with other persons belonging to the group, to develop their culture, language and traditions. These measures may require economic resources from the State. In the same way as the State provides funding for the development of the culture and language of the majority, it shall provide resources for similar activities of the minority.

57. The words "except where specific practices are in violation of national law and contrary to international standards" require some comment. The meaning of the words "contrary to international standards" is simple enough. In particular, it is intended that the practices must not be contrary to international human rights standards. This, however, should apply to practices of both majorities and minorities. Cultural or religious practices which violate human rights law should be outlawed for everyone, not only for minorities. The qualification contained in the final words of the last sentence of article 4.2 is therefore only a specific application of a universal principle applicable to everyone.

58. The first part of the sentence "in violation of national law" raises somewhat more difficult questions. It is clear that the State is not free to adopt whatever prohibitions against minorities' cultural practices that it wants. If that were the case, the Declaration and article 4.2 in particular would be nearly empty of content. What is intended, however, is to respect the margin of appreciation which any State must have regarding which practices it wants to prohibit, taking into account the particular conditions prevailing in that country. As long as the prohibitions are based on reasonable and objective grounds, they must be respected.

4.3 States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue

59. Language is among the most important carriers of group identity. In line with the general requirement in article 1 that States shall encourage the promotion of the linguistic identity of the minority concerned, measures are required for persons belonging to minorities to learn their mother tongue (which is a minimum) or to have instruction in their mother tongue (which goes some steps further).

60. The steps required in these regards depend on a number of variable factors. Of significance will be the size of the group and the nature of its settlement, i.e. whether it lives

compactly together or is dispersed throughout the country. Also relevant will be whether it is a long-established minority or a new minority composed of recent immigrants, whether or not they have obtained citizenship.

61. In cases where the language of the minority is a territorial language traditionally spoken and used by many in a region of the country, States should to the maximum of their available resources ensure that linguistic identity can be preserved. Pre-school and primary school education should, ideally in such cases, be in the child's own language, i.e. the minority language spoken at home. Since persons belonging to minorities, like those belonging to majorities, have a duty to integrate into the wider national society, they need also to learn the official or State language(s). The official language(s) should gradually be introduced at later stages. Where there is a large linguistic minority within the country, the language of the minority is sometimes also an official language of the State concerned.

62. At the European regional level, educational rights relating to minority languages are developed at greater length in the European Charter for Regional or Minority Languages, adopted by the Council of Europe. On this subject, a group of experts elaborated the Hague Recommendations regarding the Education Rights of National Minorities (October 1996), prepared under the auspices of the Foundation on Inter-Ethnic Relations.

63. In regard to non-territorial languages spoken traditionally by a minority within a country, but which are not associated with a particular region of that country, a uniform solution is more difficult to find. The principles stated above should be applied where appropriate, but where the persons belonging to the minority live dispersed, with only a few persons in each particular place, their children need to learn the language of the surrounding environment more fully at an earlier stage. Nevertheless, they should always also have an opportunity to learn their mother tongue. In this regard, persons belonging to minorities have a right, like others, to establish their private institutions, where the minority language is the main language of instruction. However, the State is entitled to require that the State language is also taught. One question to be addressed is whether the State is obliged to provide subsidies for such teaching. It would be a requirement that the State does ensure the existence of and fund some institutions which can ensure the teaching of that minority language. It follows from the general wording of article 4.3 that everyone should have adequate opportunities "wherever possible". It would therefore depend on the resources of the State how far the obligation to fund teaching of minority languages for persons belonging to dispersed groups goes.

64. Greater difficulties arise in regard to languages used solely by persons belonging to new minorities. These are usually more dispersed than are the older and settled minorities, and the number of languages spoken at home by migrants in a country of immigration can be quite large. Furthermore, the children have a great need to learn to use the language of the country of immigration as quickly and as effectively as possible. Should, however, some new minorities settle compactly together in a region of the country and in large number, there is no reason to treat them differently from old minorities. It should be noted, however, that the European Charter for Regional or Minority Languages does not cover the languages of migrants. In any case, persons belonging to new minorities are entitled to set up their own private educational institutions allowing for the teaching of and instruction in their mother tongue. The State is entitled to demand that the official language is also taught.

4.4 States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole

65. Experience has shown that in societies where different national, ethnic, religious or linguistic groups coexist, the culture, history and traditions of minority groups have often been neglected and the majorities are frequently ignorant of those traditions and cultures. Where there has been conflict, the minority groups' culture, history and traditions have often been subject to distorted representations, resulting in low self-esteem within the groups and negative stereotypes towards members of the group on the part of the wider community. Racial hatred, xenophobia and intolerance sometimes take root.

66. To avoid such circumstances, there is a need for both multicultural and intercultural education. Multicultural education involves educational policies and practices which meet the separate educational needs of groups in society belonging to different cultural traditions, while intercultural education involves educational policies and practices whereby persons belonging to different cultures, whether in a majority or minority position, learn to interact constructively with each other.

67. Article 4.4 calls for intercultural education, by encouraging knowledge in the society as a whole of the history, tradition and culture of the minorities living there. Cultures and languages of minorities should be made accessible to the majorities as a means of encouraging interaction and conflict prevention in pluri-ethnic societies. Such knowledge should be presented in a positive way in order to encourage tolerance and respect. History textbooks are particularly important in this regard. Bias in the presentation of the history and neglect of the contributions of the minority are significant causes of ethnic tension. UNESCO has concerned itself with the need to eliminate such prejudices and misrepresentations in history textbooks, but much remains to be done.

68. This paragraph of article 4 also emphasizes the complementary duty to ensure that persons belonging to minorities gain knowledge of the society as a whole. This provision should counteract tendencies towards fundamentalist or closed religious or ethnic groups, which can be as much affected by xenophobia and intolerance as the majorities.

69. The overall purpose of article 4.4 is to ensure egalitarian integration based on non-discrimination and respect for each of the cultural, linguistic or religious groups which together form the national society. The formation of more or less involuntary ghettos where the different groups live in their own world without knowledge of, or tolerance for, persons belonging to the other parts of the national society would be a violation of the purpose and spirit of the Declaration.

70. A concern similar to that of article 4.4 is expressed in the International Convention on the Elimination of All Forms of Racial Discrimination (art. 7) and in the Convention on the Rights of the Child (art. 29).

4.5 States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development of their country

71. There is often a risk that minorities, owing to their limited number compared to the majority and for other reasons, may be subjected to exclusion, marginalization or neglect. In the worst cases, the land and resources of minorities are taken over by the more powerful sectors of society, with consequent displacement and marginalization of persons belonging to the minorities. In other cases, persons belonging to minorities are neglected in the economic life of the society. Article 4.5 requires steps being taken to ensure that this does not happen. It should also prevent minorities being made into museum pieces by a misguided requirement that they remain at their traditional level of development while the members of the surrounding society experience significant improvements in their standard of living.

72. Article 4.5 calls for the integration of everyone in the overall economic development of society as a whole, while ensuring that this integration takes place in ways which make it possible for persons belonging to minorities to preserve their own identity. The balancing act required by these two separate aims can be difficult, but is facilitated by the existence of active and free associations of minorities which are fully consulted in regard to all development activities which affect or can affect their minority. Measures taken under article 2 to ensure participation facilitate this process.

Article 5

5.1 National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities

73. The participation of persons belonging to minorities in the economic progress and development of their country (art. 4.5) can be achieved only if their interests are taken into account in the planning and implementation of national policies and programmes. Their interests go beyond purely economic aspects, however. Planning of educational policy, health policy, public nutrition policy or housing and settlement policies are among the many aspects of social life in which the interests of the minorities should be taken into account. While the authorities are required to take only "legitimate" interests into account, this is no different from what is required in relation to majorities: an accountable Government should not promote "illegitimate interests" of any group, whether majority or minority. The interests of minorities should be given "due regard", which means that they should be given reasonable weight compared with other legitimate interests that the Government has to take into consideration.

5.2 Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities

74. This provision is of particular interest for development assistance, but relates also to other economic cooperation among States, including trade and investment agreements. There have been many instances in the past where such cooperation has neglected or directly violated

the interests of minorities. Development agencies, financial institutions and others involved in international cooperation have a dual task: firstly, to ensure that legitimate interests of minorities are not negatively affected by the measures implied in the cooperation envisaged; and secondly, to ensure that persons belonging to minorities can benefit as much as members of majorities from that cooperation. The notion of "due regard" means that proper weight should be given to the interests of the minorities, all factors taken into account. An assessment should be made of the likely impact of the cooperation on the affected minorities. This should be an integral part of any feasibility study.

Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia by exchanging information and experiences, in order to promote mutual understanding and confidence

75. Two sets of considerations underlie this provision. One is to share and exchange knowledge about good practices, whereby States can learn from each other. The other is to promote mutual understanding and trust. The latter is of particular importance.

76. Situations involving minorities often have international repercussions. Tensions between States have arisen in the past and in some cases continue in the present over the treatment of minorities, particularly in relations between the home State of a given minority and other States where persons belonging to the same ethnic, religious or linguistic group reside. Such tensions can affect the security of the countries involved and create a difficult political atmosphere, both internally and internationally.

77. Article 6 encourages States to cooperate in order to find constructive solutions to situations involving minorities. In accordance with the Charter of the United Nations, States should observe the principle of non-intervention in their bilateral relations. They should abstain from any use of force and also from any encouragement of the use of violence by parties to group conflicts in other States, and should take all necessary measures to prevent incursion by any armed group or mercenaries into other States in order to participate in group conflicts. On the other hand, they should, in their bilateral relations, engage in constructive cooperation to facilitate, on a reciprocal basis, the protection of equality and promotion of group identities. One approach, much used in Central and Eastern Europe, is for States to conclude bilateral treaties or other arrangements concerning good neighbourly relations based on the principles of the Charter and on international human rights law, combining commitments of strict non-intervention with provisions for cooperation in promoting conditions for the maintenance of group identities and transborder contacts by persons belonging to minorities. Provisions on minorities contained in such treaties and other bilateral arrangements should be based on universal and regional instruments relating to equality, non-discrimination and minority rights. Such treaties should include provisions for the settlement of disputes regarding their implementation.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration

78. The cooperation called for in article 7 can be undertaken at the regional and subregional levels, as well as at the level of the United Nations. At the European level, a number of intergovernmental mechanisms and procedures have been established whose purpose, at least partially, is to promote in a peaceful way the rights of minorities and achieve constructive group accommodation. These mechanisms include the Council of the Baltic Sea States and its Commissioner on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities; the OSCE, with its Office of the High Commissioner on National Minorities; and the Council of Europe, which has adopted several instruments of relevance for minorities. In the United Nations, cooperation can take place through the Working Group on Minorities.

79. The treaty bodies, in particular CERD, the Human Rights Committee and the Committee on the Rights of the Child, can also play important roles in this regard. (See also below under article 9.)

Article 8

8.1 Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties

80. The Declaration does not replace or modify existing international obligations in favour of persons belonging to minorities. It is an addition to, not a substitute for, commitments already made.

8.2 The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms

81. The rights of specific categories of persons are supplementary to the universally recognized rights of every person. The Declaration is intended to strengthen the implementation of human rights in regard to persons belonging to minorities, but not to weaken for anyone the enjoyment of universal human rights. Consequently, the exercise of rights under the Declaration must not negatively affect the enjoyment of human rights for persons who do not belong to a minority, nor for persons who belong to the minority. In their efforts to preserve the collective identity of the minority, agencies of the minority concerned cannot on the basis of the Declaration adopt measures which interfere with the individual human rights of any person belonging to that minority.

8.3 Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights

82. In accordance with article 1 of the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights. Article 2 of the Universal Declaration provides that everyone is entitled to all the rights set out in that declaration without distinction of any kind such as race, language, religion or national origin. The question has been raised as to whether special measures in favour of national or ethnic, religious or linguistic minorities constitute a distinction in the enjoyment of human rights. The same question could be put with even greater emphasis with respect to the definition of racial discrimination contained in article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination, which reads: "The term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." The question would then be whether special measures under the Declaration on Minorities, which would indeed be taken on the basis of "national or ethnic origin", would constitute a preference and therefore constitute impermissible discrimination.

83. Article 8.3 answers this question by pointing out that such measures shall not prima facie be considered to be contrary to the principle of equality. Under normal circumstances, measures to ensure effective participation, or to ensure that minorities benefit from economic progress in society or have the possibility to learn their own language will not be a privilege vis-à-vis other members of the society. It is essential, however, that such measures do not go beyond what is reasonable under the circumstances and are proportional to the aim sought to be realized.

8.4 Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States

84. As stated in the preamble, the Declaration is based on the principles of the Charter of the United Nations. Note should also be taken of the conviction expressed in the preamble that the promotion and protection of the rights of minorities contribute to the political and social stability of States. Article 8.4 serves as a reminder that nothing in the Declaration can be construed as permitting any activity which is contrary to the purposes of the Charter. Particular mention is made of activities that are contrary to the sovereign equality, territorial integrity and political independence of States. As pointed out above, the rights of persons belonging to minorities are different from the rights of peoples to self-determination, and minority rights cannot serve as a basis for claims of secession or dismemberment of a State.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence

85. Wherever possible, the agencies and bodies of the United Nations system shall contribute to the full realization of the Declaration. Projects of technical cooperation and assistance shall take the standards contained in the Declaration fully into account. The Working Group on Minorities established by the United Nations in July 1995 serves as a stimulus for such cooperation. This article should be seen in the light of the Charter of the United Nations (arts. 55-56), according to which the Organization shall promote respect and observance for human rights and fundamental freedoms. Promotion of the rights of persons belonging to minorities form part of that obligation. United Nations organs and specialized agencies should give special consideration to requests for technical cooperation and assistance that are designed to achieve the aims of this Declaration.

Notes

[1] E/CN.4/Sub.2/AC.5/1998/WP.1.

[2] E/CN.4/Sub.2/AC.5/1999/WP.1.

[3] E/CN.4/Sub.2/AC.5/2000/WP.1.

[4] The Framework Convention for the Protection of National Minorities, adopted by the Council of Europe in 1994.

[5] Most important are the Helsinki Final Act of 1975 and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, 1990, section IV, paragraphs 30 to 40.

[6] Reference can here be made also to General Comment No. 23, adopted by the Human Rights Committee at its fiftieth session. It deals with article 27 of the International Covenant on Civil and Political Rights (the minority rights provision), and points out, in paragraph 3.1, the distinction between the right of peoples to self-determination and the rights of persons belonging to minorities, which are protected under article 27.

[7] Human Rights Committee, General Comment No. 23, adopted at the fiftieth session, 1994, paragraphs 6.1 and 6.2.

[8] Report of the CSE Meeting of Experts on National Minorities, Geneva, 19 July 1991, Part IV. Text in A. Bloed (Ed.), *The Conference on Security and Co-operation in Europe* (above, note 2),

pp. 593-604. See also the second progress report of Special Rapporteur A. Eide on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1992/37), paragraphs 122-155.

[9] The Lund recommendations can be found on the Web site of the OSCE High Commissioner on National Minorities, http://www.osce.org/hcnm/documents/lund.htm.

[10] Report of the Working Group on Minorities on its fifth session (E/CN.4/Sub.2/1999/21), paragraphs 81-88.

[11] Universal Declaration of Human Rights, article 20; International Covenant on Civil and Political Rights, article 22.

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REPORT ON THE SECOND WORKSHOP ON MULTICULTURALISM IN AFRICA: PEACEFUL AND CONSTRUCTIVE GROUP ACCOMMODATION IN SITUATIONS INVOLVING MINORITIES AND INDIGENOUS PEOPLES KIDAL, MALI 8-13 JANUARY 2001

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I. INTRODUCTION

1. The second workshop on multiculturalism in Africa was held at the Town Hall of Kidal, Mali from 8 to 13 January 2001. The proposal to hold seminars on minority and indigenous peoples' issues in Africa had been made by both the Working Group on Minorities and the Working Group on Indigenous Populations and endorsed in resolutions 2000/16, 1999/19 and 1999/20 of the Sub-Commission on the Promotion and Protection of Human Rights. The seminar was organized by the Agency for Cooperation and Research in Development (ACORD), based in Kidal, and the Chairpersons of the United Nations Working Groups on Minorities and on Indigenous Populations in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNDP Bamako.

2. The Chairpersons of the two United Nations working groups and ACORD invited participants from organizations of indigenous peoples and minorities, universities and research institutes, human rights organizations, peoples and communities. OHCHR also invited the Permanent Missions in Geneva of countries in the African region and relevant United Nations departments, organizations and specialized agencies to send representatives to the workshop. The list of the participants is contained in Annex 1 of the present report.

II. OPENING OF THE WORKSHOP

3. The seminar was opened by the Mayor of Kidal, Mr. Al Abasseag Intalla, who said that development and social justice were the two most pressing issues in the region and that it was important to incorporate indigenous needs into development strategies in order to achieve sustainable socio-economic progress. The representative of ACORD, Mr. Ahmed Mohamed Ag Guidi, welcomed the participants and explained that around 41 nomadic and 4 sedentary communities lived in the region of Kidal. He said that even though concepts with regard to minorities and ethnic groups differed according to the context, development strategies and plans had to take into account the sociocultural dimension in order to integrate the needs of minorities and different ethnic groups.

4. Mr. José Bengoa, a member of the United Nations Working Group on Minorities welcomed the participants on behalf of the Working Group on Minorities and the Working Group on Indigenous Populations, saying that the workshop was a continuation of the discussions that took place during the Seminar on Multiculturalism in Africa, held in Arusha, United Republic of Tanzania from 13 to 15 May 2000. He stressed that it was important to link the discussions of the two Working Groups to concrete local experience and said that he was there to listen to the problems and solutions proposed by all participants.

5. The President of the Regional Assembly of Kidal, Mr. Manayate Ag Mohamed, also welcomed the participants. He said that the mix of minorities and multiculturalism in the region made Kidal a good venue for the seminar. He said that the region had some natural resources, but its inhabitants lacked education, training and investment. He hoped that the seminar would help to spread information about the region and overcome its reputation as a region posing security problems.

6. The Vice-Chairperson of the African Commission on Human and Peoples' Rights, Mr. Rezag Bara, expressed his hopes that the workshop would constitute an opportunity to discuss the cultural and social aspects of indigenous peoples' and minorities' rights.

7. A representative of OHCHR expressed his thanks to ACORD and UNDP Bamako for the organization of the seminar. He said that it was an important opportunity for horizontal cooperation between the various indigenous peoples and minority groups and that OHCHR would disseminate the conclusions and recommendations of the workshop. He introduced the agenda of the workshop, which consisted of the following four themes: (a) an overview of multiculturalism in West Africa and experiences elsewhere in Africa; (b) customary and traditional arrangements for maintaining good relations among different peoples in the region; (c) development in a multicultural environment; (d) the role of international and regional organizations and activities, including the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

8. At the conclusion of the opening meeting, the participants invited Mr. Hassan Id Balkassam, representing the New Association for Popular Arts and Culture (ANCAP-Tamaynut), Morocco to act as Chairperson-Rapporteur of the workshop. Mr. Id Balkassam thanked the group in the local language and French. He said that he wanted to encourage the group to exchange information, reflect on problems, elaborate recommendations and to act at the local, national and regional levels. The agenda and programme of work were adopted.

9. The participants introduced themselves and the work of their organizations. The representative of the African Commission on Human and Peoples' Rights, Mr. Kamel Rezag Bara, explained that the African Commission had formed a working group on indigenous populations constituted by four of its members. The objective of the working group was to elaborate principles for an African approach to indigenous peoples which might result in the elaboration of an optional protocol to the African Charter on Human and Peoples' Rights.

10. Mr. Id Balkassam, from the New Association for Popular Arts and Culture, welcomed the establishment of a working group on indigenous populations by the African Commission and recommended that non-governmental organizations dealing with indigenous and minority issues be invited to participate. He also suggested that a fund be set up to assist representatives of African indigenous peoples and minorities to participate in the new working group and recommended that the African Commission also consider establishing a working group on minorities.

III. OVERVIEW OF MULTICULTURALISM IN WEST AFRICA AND EXPERIENCES ELSEWHERE IN AFRICA

11. Under the first item on the agenda, Ms. Samia Slimane (expert) presented a background paper entitled "The rights of peoples in Africa: towards the recognition and protection of ethnic, religious and linguistic identity". In her presentation of the document, she said that African States consisted of a variety of ethnic, religious and linguistic groups, but that that cultural wealth, rather than being seen as an asset, had often been the source of tensions, even conflicts, among the different communities. She stressed that the mechanism for conflict prevention,

management and resolution established by the Organization of African Unity in 1993 had failed to integrate an ethnic dimension in its approach despite it being a crucial element in the relationship between human rights and social and political stability in Africa. Nevertheless, she observed that the practice of the African Commission on Human and Peoples' Rights did take into consideration the issue of indigenous peoples more particularly in the Commission's guidelines for the presentation of State reports. She noted, however, that the conceptual approach to peoples' rights in the Charter remained confused and she regretted that the Commission had not yet defined this concept in the African context. Finally, she remarked that Cameroon was the only West African State that had integrated the State's obligation to ensure the protection of minorities and uphold indigenous peoples' rights into its Constitution. She concluded that the African constitutional discourse was in essence unitary because States feared ethnic divisions. However, she believed that States could easily adopt legal practices that took into account the variety of identities present in the continent.

12. Mr. Id Balkassam, from the New Association for Popular Culture and Arts (ANCAP-Tamaynut), said that the Constitutions of most African countries did not recognize the cultural rights of indigenous peoples, including the right to use one's own language. In that context, he remarked that Algeria had recognized the Amazigh dimension of Algerian culture in its Constitution in 1996. He stressed that it was important to integrate indigenous and minority languages into the national educational and administrative systems. He explained that his organization was defending the Amazigh language and culture and had participated in the international arena during and since the holding of the World Conference on Human Rights in Vienna in 1993. In 1994, several Amazigh organizations had decided to create the World Congress of Amazigh Peoples. Since then his organization had worked with human rights and cultural organizations on the basis of article 27 of the International Covenant on Civil and Political Rights and ILO Convention No. 169 concerning indigenous and tribal peoples, had organized seminars in Morocco on human rights, including the rights of indigenous women, and had translated ILO Convention No. 169 into Amazigh.

13. Mr. Kamel Rezag-Bara said that the African Charter used the term "peoples", but that the term had to be interpreted from a historical perspective within the framework of the independence movement, when "peoples" were fighting for liberation from colonization. The problems of minorities and indigenous peoples were closely linked to the creation of nation States whose frontiers were arbitrary and largely inherited from the colonial period. The African Charter on Human and Peoples' Rights was based on the legal framework of the nation State. He also noted that the concepts of "indigenous peoples" and "minorities" posed problems, in particular as to which groups in Africa should be identified under these terms. He drew attention to the risks of ethnic violence and the disintegration of States and the importance of a multicultural approach in dealing with minority rights. In that respect, he recommended focusing the debate on cultural rights and said that those rights should be linked to the notion of citizenship.

14. Mr. Id Balkassam said that the term "peoples" was a dynamic concept and that in the future it might be developed under the African Charter to refer not only to nation States but also to indigenous peoples. He underlined that important international developments had already taken place, such as the elaboration of ILO Convention No. 169, the adoption of the minority

rights declaration, and the establishment of a permanent forum on indigenous issues in the United Nations. He stressed, however, the need for national debates on minority and indigenous rights.

15. Ms. Aichatou Ben Wahab from the Niger Women's Coalition Against War explained that the Tuareg in Niger had demanded a decentralized State system in which they would have a degree of autonomy and participation in the State structure, for example by being part of the national army. She rejected the concept of "minorities", as she believed Governments often used the term to divide and rule. She recognized that the situation of the Tuareg in Niger had now improved, as they were now represented in government. She welcomed the decision to allow people to vote where they lived, a measure which had improved the participation of nomads in elections.

16. Dr. Mariam Maiga, President of the Coalition Nationale de la société civile pour la paix et la lutte contre la prolifération des armes légères in Mali said that coexistence among different ethnic groups was usually regulated by traditional norms and values and that ethnic conflicts were often caused by external rather than internal factors. In her view, the rights of minorities had to be accepted by the majority population if the process of reconciliation was to work successfully. For such a consensus to be reached, she argued, the whole population needed to appreciate more fully the protection afforded to all citizens under the Constitution and to understand better the rights accorded to citizens, which should include consideration of the question of minority rights.

17. Mr. Rhissa Ag Rotbou, a teacher from Kidal, defined minorities as those groups that were excluded from important processes and resources in society, such as development, decision-making, information and the means of production. He said that the Tuareg had limited access to the national administration and the armed forces in his country. In his view, customary ways of conflict resolution were important; however, they had often been manipulated for political purposes.

18. Mr. Allareny Camara, representing the Guinean Organization for the Defence of Human and Citizens' Rights, Guinea, explained that since 1958 ethnic cleavages had been used in his country for electoral purposes, when leaders sought support from their ethnic group and tried to de-legitimize the opposition on the basis of their ethnic origin. Parties had been radicalized around ethnic origin and ethnic identity was now used to mount attacks against opponents. He explained that intolerance and racism had increased in his country owing to incursions by rebels from neighbouring Sierra Leone in frontier areas. In order to protect and integrate minorities, he argued for a strengthened rule of law and the installation of an independent and effective judicial system, the re-creation of a culture of peaceful coexistence through education, and the rehabilitation of traditional forms of conflict management through the creation of councils of elders.

19. Ms. Lucy Mulenkei, from the Indigenous Information Network in Kenya, underlined the importance of identifying minorities in order to protect them from abuse and marginalization, and suggested that guidelines should be elaborated on how to identify minorities and indigenous groups. She also regretted that so few African States took part in the Working Group on

Indigenous Populations and suggested that the African Commission on Human and Peoples' Rights should encourage African States to participate more in the United Nations work on indigenous peoples.

20. Mr. Kamel Rezag Bara suggested that cooperation between the African Commission and OHCHR and such bodies as the Working Group on Indigenous Populations should be strengthened.

21. Ms. Teody Lotto, representing the Sudanese Women's Voice for Peace, said that the civil war in the Sudan was the forgotten war of Africa. She explained that the Sudanese war was not a result of religious cleavages, but of the denial of human rights in general and the right to development in particular, and appealed to the African Commission on Human and Peoples' Rights to defend human rights in the Sudan. She referred to the important roles of the councils of elders and of older women that had traditionally promoted dialogue, mediation and arbitration in cases of inter-ethnic conflict in the Sudan.

22. Mr. Richard Ofotsu Apronti, representing the Ghana Committee on Human and Peoples' Rights, said that citizenship was linked to the notion of national territory and that common measures such as free education for all would help to create a peaceful multicultural society. He cited the example of the Pan African Cultural Festival to show that cultural assertiveness and unity could go together. He stressed that customary ways of conflict resolution should be strengthened, as well as governmental institutions that promoted culture.

23. Ms. Saoudata Aboubacrine, President of the Tuareg organization, Tin Hinan, in Burkina Faso, said that Tuaregs had a common identity that was expressed through a common culture, language and land, and that that common land had been lost under colonization and now formed part of several different nation States.

24. Mr. Ahmed Ag Guidi, from ACORD, said that Governments had to take into consideration the ways of life of the different communities in order to avoid developing uniform policies and legislation that effectively caused discrimination. He also added that groups with special needs and problems required special protection, measures and resources. He explained that international aid only reached his region during times of crises, not in times of peace and that regular aid is necessary to assure the stability of the region and its sustainable development. Aid donors should respect the traditional way of life of nomads, as it was the lifestyle which was best adapted to the natural environment of the desert. He also stressed the importance of strengthening traditional authorities that had been essential actors during conflict resolution.

25. The representative of the African Commission on Human and Peoples' Rights, Mr. Kamel Rezag Bara, said that the right of self-determination should not call into question national boundaries. He explained that the way to advance minority rights was to focus on cultural and linguistic rights. He said that the Constitution of Cameroon was the only African Constitution which provided for protection of minority and indigenous peoples' rights. He believed that decentralization and political participation were necessary and that the aim of marginalized groups should not be to seek assistance and welfare but to take part in decision-making. He stated that national authorities had often destroyed traditional authorities or

used them to oppress local communities. He called for a partnership between the official authorities and traditional leaders in a process of reconciliation aimed at integrating modernity and development into the local culture.

26. Ms. Lucy Mulenkei, representing the African Indigenous Women's Organization, said that indigenous peoples valued their own culture and had their own ways of resolving conflict and expressing their solidarity. She underlined the importance of regular information exchange and human rights education for communities to raise awareness about their rights.

27. Ms. Samia Slimane (expert) made two comments by way of conclusion to the discussions of the first day. First, she remained convinced that the recognition and the protection of ethnic identities were a precondition for limiting the risk of ethnic conflict. She stressed the inadequacy of the abstract juridical principle of equality that States had adopted, and recommended the adoption of special measures in favour of vulnerable ethnic groups, whether in terms of their traditional rights to the land or their particular ways of life. Secondly, she welcomed the creation of a working group on indigenous populations within the African Commission on Human and Peoples' Rights and the Organization of African Unity. However, she considered that it would be important that the African Commission show flexibility in its interpretation of the notion of peoples' rights recognized in the African Charter. To limit this notion to the concept of people-State while neglecting its ethnic dimension would considerably reduce the extent of protection that could be expected from the Charter in the context of the discourse on minorities.

IV. DEVELOPMENT IN A MULTICULTURAL ENVIRONMENT

28. Mr. Khattali Mohamed Ag Mohamed Ahmed, an academic and Tuareg from Mali, referred to his studies on the application of international human rights standards to the situation of the Tuareg. In his view, the history, culture, social and economic circumstances of the Tuareg in Mali permitted them to be identified as both a minority and an indigenous people, under international human rights law. Lending support to the claim that the Tuareg civilization had been recognized, he referred to the contents of a 1994 government white paper which had acknowledged that two civilizations, nomadic and sedentary, existed in Mali.

29. In situations where the cultures of the majority and minorities differed and where strict observance of the decisions of the majority would not protect the culture of the minority, he advocated the recognition of collective rights and the implementation of the articles of human rights instruments that provided for affirmative action and positive discrimination. He outlined special measures of protection that could be applied in favour of the Tuareg of Mali, ranging from ensuring that the number of Tuareg in Parliamentary seats reflected the percentage of the Tuareg population in Mali to the possible establishment of regional assemblies with the authority to pass laws in specific fields of activity.

30. National cohesion was best served by the peaceful coexistence of different groups. Further safeguards for achieving such coexistence included the recognition of cultural diversity in national legislation and providing for cross-border cooperation between peoples. Measures for ensuring proportional Tuareg representation in the armed forces and civil service were also needed. Such measures, combined with the legal protection of the written and oral language of communities, would counterbalance the cultural uniformity promoted by the media.

31. The discussion remained focused on the situation of the Tuareg and covered such difficult issues as the origins and response to the conflict in northern Mali, including the previous claim of the Tuareg to independence.

32. As a constructive response to those concerns, reference was made to the National Pact of 11 April 1992 between the Government of Mali and *Les Mouvements et Fronts Unifiés de l'Azawad consacrant le Statut Particulier du Nord du Mali* (copies of which were distributed during the meeting). It was explained to participants that the National Pact had been drawn up to bring an end to the conflict and had gradually come about through consensus and accommodation of the differences between the majority and minority populations. As such, not all the demands of the different parties had been met. For example, the National Pact did not meet the request of the Tuareg for the territorial division of the country, and the inclusion in it of a reference to the term "autonomy" had been rejected. Nevertheless, the National Pact was perceived to have accorded a special status to the northern region of Mali and was aimed at the integration of the Tuareg and all other communities in the northern part of the country. In responding to requests for clarification with regard to the present claims of the Tuareg, Mr. Mohamed offered his personal view that it was based on the recognition and protection of culture, the fulfilment of which could not be achieved without political action.

33. Divergent views on the shortcomings of the Pact were expressed during the meeting. It was noted that while progress was being made in ensuring the integration of communities in the composition of the civil service, insufficient measures had been taken to implement economic plans and to ensure the disbursement of funds. Other stronger measures were advocated to ensure the implementation of the provisions of the National Pact, including a more consistent and serious review process.

34. Dr. Mariam Maiga spoke about the particularly important role played by women and civil society in sensitizing the majority of the Malian population to the provisions of the National Pact. She also referred to support from regional actors, especially from Algeria, as well as important contributions received from international partners for the drafting process and the future implementation of the National Pact. At the initial stage of the Pact's formulation, the sedentary population had considered that it had primarily taken account of the concerns of those who had conducted the rebellion. She explained that the majority sedentary population had not easily accepted certain aspects of the Pact. She agreed that greater progress in the Pact's implementation was needed. Despite the difficulties encountered, women continued to work for peace and the constructive resolution of differences between communities in the country.

35. Mr. Ag Guidi, speaking under item 3 of the agenda on the issue of development for minority communities and indigenous peoples, provided information on the general approach of ACORD to developmental matters. Regarding specific activities in favour of the Tamasheq speaking people, the Kel Tamasheq, more commonly known as Tuareg, he explained that the emphasis of the programmes was on responding to the needs of pastoralist communities. The absence of land security for the pastoralists was identified as a major obstacle to their development. Participants were informed that other communities in the north of Mali were better integrated into society than the Kel Tamasheq, the latter having suffered from political, economic and social exclusion, as well as severe poverty accentuated by severe drought and two rebellions.

36. Mr. Ag Guidi urged participants to call for concerted action to realize development and democracy. He believed that decentralization, supported by transparent, good governance, would help to achieve those ends. Commenting on the views of previous speakers who had referred to the weaknesses of the National Pact, he spoke of the need to reinforce confidence-building measures. Continued tolerance and dialogue were important for the resolution of conflict, and different views and interests had to be accommodated to ensure that the whole community benefited. Wherever and whenever human rights were not respected, difficulties and problems were created. Using the Tuareg as an example, he expressed the view that their present difficulties had arisen from past failure to respect their culture.

37. Mr. Ibrahim Ag Youssouf, a consultant with UNDP Mali and adviser to the peace process in the northern regions, cautioned against a simplistic compartmentalization of majority and minority populations into sedentary and pastoralist or nomadic communities. He advocated the need for the careful handling of such labels, which had often been imposed by colonial authorities (opposed to integration) and were not always accurate or helpful. By way of explanation, he pointed out that, historically, the Tuareg had not always been pastoralists. Moreover, economic realities and the exigencies of nature often required that communities diversify their field of activity. As such, all communities needed to recognize their mutual needs and reliance on each other to survive and develop.

38. Ms. Lucy Mulenkei indicated that the problems facing the Tuareg were similar to those facing pastoralists in Kenya and in other parts of Africa. She informed participants that land sharing among pastoralists and between agriculturalists and pastoralists often raised difficulties for communities living in semi-arid lands. Such issues became most acute during periods of drought when communities sought more fertile ground for their livestock or crops; such movements could develop into a source of conflict within and between countries. Similar issues were raised by Mr. Ag Guidi. He spoke about the difficulties of communities sharing meagre resources, and the present climate of perceived favouring of the agriculturalists, and called for a legal regime to be developed which protected the rights of all the various communities. The general view was expressed that inequality was a product of intolerance of cultural differences.

39. Ms. Mulenkei and other participants expressed the view that education was the key to realizing development and spoke of the need for such services to be provided to all indigenous peoples, as well as the Tuareg. There was a need to ensure that the opportunities for education of children in Kidal were equal to those of children in other parts of the country. Education within communities was also seen as essential if multiculturalism was to be respected and protected nationally. Mr. Ag Youssouf raised the point that only well informed and educated people would have the necessary influence to protect their interests and their country. In his view, education had to be the top priority, so that Tuareg and other communities were capable of voicing their views and speaking to the world. He also stressed the importance of a written tradition and historical texts in protecting the identity and culture of groups. He recognized that investment in education had to be a long-term commitment. Without it, he believed, other investments in water and support for economic development could be lost. Exclusion and unequal access to resources would remain an issue so long as only those who were more integrated into society attended school and had more control over the State apparatus.

40. Ms. Aichatou Ben Wahab, National Coordinator of the Niger Women's Coalition Against War (CFNCG), provided further details about the history of the problems faced by the Tuareg in Niger. The Tuareg had suffered for calling for a federalist State and autonomy. While those demands had been rejected, the Government had eventually opted for decentralization. The sedentary population had not supported the same demands as the nomadic groups. She observed that pacts for protecting and respecting rights were often only developed after problems arose, and thus the preventive functions of the recognition, respect and protection of the rights of minorities and indigenous peoples were neglected.

41. Ms. Ben Wahab indicated that even with decentralization, health and other services were still lacking in Tuareg areas. The vastness of those areas, which affected the delivery of services, meant that they should be given priority for development. Priority should also be given to reintegration of former rebels into society and to providing them with employment. Their proportional recruitment into the armed forces and civil service was also vital, she indicated. She spoke out against electoral fraud as it affected particular communities, as well as against the discriminatory effects of the tax system on the pastoralist communities which, in some cases, were a legacy of the colonialist period. Lastly, she called for all communities to be given a fair share of the national product.

42. Agreement was expressed with many of Ms. Ben Wahab's comments concerning the difficulties encountered by pastoralist and nomadic communities in their quest for development. The issues raised were considered common to various communities and regions, where populations had difficulty in being integrated into the development of their country. The Tuareg were recognized as one of many examples of a community suffering from high illiteracy and a paucity of educational and health services.

43. During the course of the meeting, participants made mention of not only the key role of States in drawing up and promoting solutions but also the constructive and complementary role to be played by the internationalization of finding solutions to problems, where difficulties were encountered in relying solely on national support. It was indicated, for example, that donor support was currently being sought to help implement the provisions of the National Pact in Mali. However, it was indicated that, in other situations, difficulties arose in attracting external funds for investment where the development of a region was not considered to be sufficiently profitable. In that regard, reference was made to a case where international financial institutions could have, but had not, played a role in building roads and other communications' infrastructure.

44. Poor management of the transfer of resources and injustice in the distribution of resources were also viewed as causes of many of the problems facing minority communities and indigenous people. Another potential source of problems identified was the failure to provide for policies of cross-border cooperation between those indigenous and minority communities separated by frontiers imposed during the colonial period that had not taken account of the composition of different States' populations.

45. General suggestions were put forward for improving the situation of different communities. The recognition in Constitutions of cultural diversity was viewed as an important safeguard of the traditions and identity of minorities and indigenous peoples. So too was

legislative protection of the linguistic rights of minority and indigenous communities at the national level. It was also stated that all national resources had to be shared on an equal basis throughout the country. Further suggestions related to the need to have minimum representation of different communities in all institutions within a country, and for respect not only of individual rights but also collective rights to land and culture. By way of example, it was suggested that the protection of such rights could best be protected through the establishment of special institutions, such as a Council of Tuareg Minority People.

46. Participants reflected upon such concepts as regionalism and federalism, autonomy and decentralization. They sought to clarify the meaning of the term "autonomy" and its similarity to or difference from "decentralization". Generally, decentralization was perceived as a more readily acceptable term to describe, inter alia, greater local control over decision-making. The view was expressed that while decentralization might have been accepted de jure, sufficient resources had not always been made available to ensure that it worked in practice. Participants were also informed that requests for federalism and accompanying territorial autonomy had in certain instances been rejected as a mode of governance. A lack of familiarity with that mode of governance, including from colonial times, was considered to be one of the factors inhibiting its acceptance. The principle of autonomy had not been rejected everywhere, it was said. It had been accepted in the Constitution of Ethiopia.

V. THE ROLE OF INTERNATIONAL AND REGIONAL ORGANIZATIONS

47. With respect to item 4 of the agenda relating to international developments, Mr. José Bengoa, expert member of the Working Group on Minorities, offered a brief history of the development of the concept of minorities. He spoke of its association with past events in Europe and the functioning of the former multicultural Russian and Austro-Hungarian empires as protectors of the minority rights of peoples inhabiting their territory. Following the collapse of those empires, the League of Nations had taken up the task of protecting minorities, which had then been inherited by the United Nations, although the first session of the Working Group on Minorities had met only in 1995. Regarding the definition of minorities, he indicated that communities referred to as minorities were generally composed of a numerically relatively smaller population in the country in which they lived that suffered from marginalization on account of their limited access to political, economic and social power.

48. In the case of the term "indigenous populations" or "peoples", it was indicated that it had originated in the Latin American region and had been attributed to the first nations existing there prior to transatlantic colonialization. The Latin American situation offered a clear view as to the original peoples and descendants of foreigners in that continent. The situation in the African region with regard to trying to determine which people were originally settled on particular tracts of land was made more complex by the migratory patterns of different communities over the centuries. Nevertheless, bringing clarity to these issues in the context of the African and Asian situation was important, Mr. Bengoa said, in order to advance an understanding of human rights law applying to minorities and indigenous peoples; in that respect, the experience and contribution of the persons most concerned with indigenous and minorities issues in those two regions were essential.

49. The representative of OHCHR spoke about the Working Group on Indigenous Populations, which, since its establishment in 1982, had developed into a meeting of almost 1,000 participants with a focus on the issues of the traditional rights of peoples, their affinity and attachment to their land, and the protection of their sacred sites. He spoke of the importance of encouraging greater African governmental interest in the Working Group's proceedings, especially in the light of concerns that had been raised during the present workshop and in the previous meeting in Arusha. He mentioned that through international cooperation with United Nations organizations, indigenous peoples had begun addressing the question of the protection of their collective rights and their control over health and education. Participants were informed that the newest initiative for the international consideration of indigenous peoples' issues was the establishment of a permanent forum. The Permanent Forum on Indigenous Issues to be instituted at the level of the Economic and Social Council was considered an important instrument for indigenous peoples to influence decision-making. The Forum was to be composed of 16 independent experts serving in their personal capacity, half of whom would be nominated by Governments and the other half would be indigenous experts appointed by the President of the Council following consultations with Governments and indigenous organizations. He also mentioned the various meetings being organized around the World Conference against Racism, to be held in Durban, South Africa from 30 August to 7 September 2001, and the importance of contributing to that process.

50. Mr. Hassan Id Balkassam drew attention to the experience his organization had gained from following the evolution of standards and practices in relation to the promotion and protection of the rights of minorities and indigenous peoples. He indicated that while the Universal Declaration of Human Rights of 1948 had not contained a provision relating to minorities, that omission had been rectified in 1966 with the adoption of the International Covenant on Civil and Political Rights, including the provisions of its article 27. International interest in the situation of indigenous peoples and minorities had not been confined to the Commission on Human Rights. The ILO had adopted Convention No. 107 in 1957. He drew attention to the drawbacks of that Convention. It was perceived as more concerned with the integration and assimilation of indigenous peoples, without fully respecting their identity and culture. That lacuna was said to have been addressed in ILO Convention No. 169, adopted in 1989, which took account of the right of indigenous peoples to self-identification and to the preservation of and respect for their traditions and languages. The speaker confirmed that his organization had become involved with indigenous peoples' work after following the meetings of the World Conference on Human Rights in 1993. The self-identification of his people as an indigenous people and not a minority could be traced from then. He also drew attention to the future World Conference against Racism and related meetings, and reminded participants that the current meeting in Kidal was the first in Africa to hear of the setting-up of the Permanent Forum on Indigenous Issues, it having only been formally approved in December 2000. He urged participants to involve themselves in the process of choosing the indigenous peoples' representatives to the Forum.

51. Many participants indicated their interest in receiving more information more regularly from the United Nations on new developments at the international level. A similar sentiment was expressed regarding developments at the regional level, such as the setting up of a future African Commission working group on indigenous populations. As a consequence of the interest expressed about international developments, clarification was requested as to the balance

between the international and national systems for the protection of the rights of indigenous peoples and minorities. That request helped focus attention on the basic usefulness of international mechanisms as a catalyst for change at the national level, but not as an alternative to national action.

52. The relationship between international, regional and national efforts to address minority and indigenous issues was again highlighted following comments by Mr. Jules Batchono of the Secretariat of the African Commission on Human and Peoples' Rights. He drew attention to the difficulties of raising indigenous and minority issues in Africa when there was insufficient agreement on their definition. He indicated that, in certain instances, resorting to the use of the terms "minorities" and "indigenous" could even become part of the problem in responding to the needs of such communities and peoples. For example, the concept of indigenous peoples had been linked to separatist or liberation movements, including in the context of decolonization. On the other hand, persons raising minorities issues had been viewed as opponents of the Government, on account of their recourse to a concept emanating from Europe and perceived as offering protection to foreigners. As such, the usefulness of these terms in Africa was deemed to be deserving of further careful consideration.

53. With the aim of moving the discussion forward, several participants expressed a preference for describing indigenous peoples and minorities as "excluded or marginalized communities, peoples or groups", it being agreed that unequal opportunities for development and unequal access to State resources and decision-making, as well as lack of protection of their culture, were criteria which served to distinguish indigenous peoples and minorities from other communities or groups.

54. Participants discussed ways and means of addressing issues of concern to indigenous peoples and minorities, greater local access to and control over resources being viewed as one method of alleviating their difficulties. It was pointed out, however, that if local administrations were to operate effectively, sufficient resources had to be made available to them.

55. Further discussion revealed that while decentralization as a concept had gained currency in various countries of the region, the same did not hold true for autonomy or the rights of indigenous peoples to self-determination as concepts. Following the reflections of Mr. Hassan Id Balkassam on the issues of federalism, autonomy and self-determination as a revitalization of democracy within the State, participants considered those issues. One view expressed was that it was premature to talk about autonomy for indigenous peoples and minorities, or about the self-determination of indigenous peoples, where that called for the disengagement of the State.

56. Other views expressed included recognition that the State and Government were responsible to the whole society and for providing the structures to ensure respect for diversity and the protection of identity and cultures. It was suggested that the protection of culture was even more necessary given the negative impacts of globalization. As such the question to be discussed, in the view of participants, was how to construct the institutions of a State and nation to respect diversity and protect identity and cultures, especially in the era of globalization.

57. Mr. José Bengoa said that the question of autonomy was a very complicated issue that was being discussed in various forums around the world, including in national parliaments. He provided examples of claims of indigenous peoples and minorities for greater control over resources and culture within the unity of the State. He spoke of the dangers of any autonomy conceived in isolation and which failed to respect the needs of a society as a whole, as well as its diversity. As such he rejected any notion of autonomy which supported the "politics of reservations", permitting the hidden domination of one group by another or the separation of one group from the rest of society. He emphasized that inter-culturalism and multiculturalism were vital concepts for addressing the problems of excluded and marginalized groups and communities, especially given the mosaic of communities and peoples living in the countries of Africa.

58. Mr. Kamel Rezag-Bara said that the African Commission was interested in dealing with minority and indigenous issues within the African context. He explained that despite the recognition in the Constitution of Cameroon of the existence of minorities and indigenous groups, it had not been agreed that the African Commission would include the term minorities in the title of its working group on indigenous populations. He suggested that the United Nations should consult closely with the General Secretariat of the Organization of African Unity with a view to sensitizing countries to the issues of minorities and indigenous populations and their relevance within the African context. He believed that any hostility which had existed to the concepts of indigenous peoples and minorities would be overcome, on the understanding that the basis for such claims was the protection of the rights of groups to their identity and culture, while ensuring the integration of all communities and groups within the State. He also clarified that such rights were to be protected and promoted on the basis that members of such groups were citizens of the State and not through self-determination as a right of secession.

59. In order to promote better protection of minorities it was suggested that consideration should be given to the possibility of setting up national observatories to look into such matters. Mr. Ag Youssouf of UNDP added that, in his view, a new situation existed, in which people wished to have their rights protected and needed the means to do so. Education and information were vital tools to that end. It was also stated that real concern existed on the part of communities; they feared that without equal access to resources they would not only lose their culture but also the chance to modernize. With a view to assisting more communities to be aware of their rights and to make use of the various mechanisms for their protection, it was suggested that future meetings on indigenous peoples and minority rights should ensure the participation of those people who had no access to non-governmental organizations.

VI. CONCLUSIONS AND RECOMMENDATIONS

60. Ms. Lucy Mulenkei presented a draft text containing the conclusions and recommendations of the workshop. Participants made a number of suggestions for changes and additions. Participants also called for greater dissemination of information and closer cooperation between international and regional human rights mechanisms.
Mr. Kamel Rezag-Bara suggested that the Kidal Declaration should be translated into the local language of the region, Tamasheq. Additionally, it was suggested that further efforts should be undertaken to analyse the concept of indigenous peoples, particularly within the African context.

61. At its concluding meeting on 12 January 2001, participants adopted the following Declaration:

Kidal Declaration on Indigenous Peoples and Minorities in Africa

Participants meeting at the Second Workshop on Multiculturalism in Africa: Peaceful and Constructive Group Accommodation in Situations involving Indigenous Peoples and Minorities in Kidal, Mali from 8 to 12 January 2001, expressed their gratitude to the Agency for Cooperation and Research in Development (ACORD), the Chairpersons of the Working Group on Minorities and of the Working Group on Indigenous Populations, and the Office of the United Nations High Commissioner for Human Rights for organizing the workshop. They also recognized the important support provided by the United Nations Development Programme in Mali and by the Malian authorities.

Participants recognized the complexity of the concepts of indigenous peoples and minorities in Africa, noting that some participants identified themselves as "indigenous peoples", some as "minorities" and some by another term, and encouraged further dialogue among the different peoples of the continent on this issue.

Participants welcomed the participation of the representatives of the African Commission on Human and Peoples' Rights in the workshop and the establishment of a working group on indigenous populations by the Commission.

Participants called upon African Governments to:

Recognize the cultural identity and existence of indigenous peoples and minority groups in Africa;

Combat discrimination against and marginalization of indigenous peoples and minorities in areas such as education, health and development, and take special measures to protect and promote their economic, social and cultural rights;

Recognize that indigenous peoples and minorities are often the victims of conflict in Africa, undertake research on the causes of inter-ethnic conflict and promote dialogue between indigenous peoples and minorities and Governments;

Recognize the fundamental role played by women in peace-building in Africa and support their initiatives;

Recognize the difficulties faced by the Tuareg people and promote the implementation of the National Pact concluded between the Government of the Republic of Mali and the Movement and Unified Front of Azawad of 11 April 1992;

Build partnerships between traditional elders and governmental authorities at the local and national levels;

Respect and implement the African Charter on Human and Peoples' Rights;

Respect international human rights instruments protecting the rights of indigenous peoples and minorities, including the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and ratify Convention No. 169 on indigenous and tribal peoples of the International Labour Organization;

Recognize the need to build culturally appropriate development programmes in cooperation with indigenous peoples and minorities as a means of promoting their integration and ensuring peace and stability in the region;

Support appropriate development activities for nomadic and pastoralist peoples;

Include representatives of indigenous peoples and minorities in governmental delegations to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;

Participate actively in international and regional meetings on indigenous peoples and minorities, including the United Nations Working Group on Minorities and Working Group on Indigenous Populations, the working group established to elaborate a draft declaration on the rights of indigenous peoples and the Permanent Forum on Indigenous Issues established by Economic and Social Council resolution 2000/22.

Participants called upon the African Commission on Human and Peoples' Rights to:

Invite non-governmental organizations dealing with indigenous and minority issues to participate in the new working group on indigenous populations;

Set up a fund to assist representatives of African indigenous peoples and minorities to participate effectively in the new working group;

Consider establishing a working group on minorities.

Participants called upon the Office of the United Nations High Commissioner for Human Rights to:

Ensure the participation of representatives of indigenous peoples and minorities in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and provide the funds to facilitate their participation;

Organize further workshops and seminars on multiculturalism, indigenous peoples and minorities in other subregions of Africa;

Establish a voluntary fund for minorities, as has been done for indigenous peoples, to assist representatives of minorities to participate in the United Nations Working Group on Minorities and other relevant human rights meetings, and to carry out their own development projects;

Strengthen its ties with the African Commission on Human and Peoples' Rights on questions relating to indigenous peoples and minorities;

Ensure that the paper prepared by Samia Slimane for the workshop on the regional legal framework be made available to the seventh session of the Working Group on Minorities and the nineteenth session of the Working Group on Indigenous Populations in all working languages;

Submit the report of the workshop to the seventh session of the Working Group on Minorities and the nineteenth session of the Working Group on Indigenous Populations in all working languages;

Make available the present declaration to the regional meeting for Africa for the World Conference against Racism, taking place in Dakar, Senegal from 22 to 26 January 2001.

Participants called upon African non-governmental organizations, indigenous peoples and minorities to:

Organize workshops and seminars to promote and protect the rights of indigenous peoples and minorities and raise awareness and disseminate information about their situations;

Participate in local, national, regional and international processes concerning indigenous peoples and minorities.

62. Following the adoption of the Kidal Declaration, the Chairperson Rapporteur thanked all the participants and organizations which had contributed to the successful outcome of the meeting and a fruitful exchange of views on indigenous and minority issues in the region. He asked for the widest possible dissemination of the Kidal Declaration.

63. On behalf of the two United Nations working groups, on minorities and indigenous populations, Mr. José Bengoa expressed his appreciation of the richness of the discussion during the meeting. The usefulness of such seminars, he said, was that they formed part of a process for recognizing the issues important to different peoples, groups and communities; and reflection on such matters was vital. He was of the view that the concepts, theories and policies raised during this meeting should also be studied in the Working Group on Minorities. Real democracy only existed when there was acceptance of differences and tolerance of diversity. Greater efforts were essential to ensure the continued existence and recognition of minorities and indigenous peoples. With respect to the African region, he spoke of the wealth of diversity of its people and how important it was that the richness and strength of its culture should not be lost.

64. Mr. Kamel Rezag-Bara spoke of the value of supporting a multicultural approach to address the issues facing indigenous peoples and minorities, including for recognition of the identities of different groups in Africa. Although the African Commission had only recently embarked upon addressing the questions of indigenous peoples and minorities, the participation of the Commission at the meeting represented a commitment on the part of the Organization of

African Unity. He spoke of the intention of his organization to integrate the rights of indigenous communities and minority groups within approaches for realizing development.

65. Ms. Saoudata Walet Aboubacrine expressed the wish that support be given to the holding of further regional and national workshops and for the provision of expertise to assist in the development of national plans.

66. A representative of OHCHR expressed the wish of OHCHR for continued cooperation with the regional and national organizations and their representatives.

67. Mr. Ahmed Ag Guidi informed participants that the results of the meeting would be shared with people in the rural areas by means of a radio cassette on the meeting that would be produced by journalists.

68. Mr. Manayat Ag Mohamed, President of the Regional Assembly, in his closing remarks expressed his sincere wish that the Tuareg and other civilizations would prosper.

Annex

LIST OF PARTICIPANTS AND OBSERVERS

Mr. Hassan Id Balkassam
Association Nouvelle pour la Culture et des
Arts Populaires (ANCAP-Tamaynut)
Morocco

Ms. Lucy Mulenkei
African Indigenous Women's Organization (AIWO)
Kenya

Mr. Kamel Rezag-Bara
Vice-Chair
African Commission on Human and Peoples' Rights

Mr. Jules Batchono
Legal Officer
African Commission on Human and Peoples' Rights

Ms. Teody A. D. Lotto
Sudanese Women's Voice for Peace

Mr. Richard Apronti
Ghana Committee on Human and Peoples' Rights

Mr. Allanreny Camara
Organisation Guinéenne de Défense des Droits de l'Homme et du Citoyen
Guinea

Mrs. Aichatou Ben Wahab
National Coordinator
Niger Women's Coalition Against War (CFNCG)

Dr. Mariam Maiga
President, Coalition Nationale de la Société Civile pour
la Paix et la Lutte Contre la Prolifération des Armes Légères
Mali

Mr. Ibrahim Ag Youssouf
Adviser
UNDP Mali

Ms. Saoudata Walet Aboubairine
Coordinator and President
Tin Alhane, Burkina Faso

Mr. El Abasse Ag Intella
Mayor, Commune of Kidal

Mr. Manayat Ag Mohamed
President
Regional Assembly, Mali

Mr. Ahmoudane Ag Ikmass
First Deputy to the Mayor of Kidal

Mr. Ahmed Mohamed Ag Guidi,
Ms. Salwa Wallet Sidi
Mr. Ekamel Ag Sidi
ACORD, Kidal, Mali

Mr. Khattali Mohamed Ag Mohamed Ahmed
Academic and Tuareg
Mali

Mr. Rhissa Ag Rotbou
Teacher

Mr. Ibrahim Massouda
Ex-combatant

Mr. Cheick Ag Baye
Kidal, Mali

Mr. Baba Ahmed Ag Atlagh
Atttaché d'administration
AMN-DPS, Kidal

Ms. Florence Balla
Aide Médicale Internationale, Mali

Ms. Walatadye W. Mohamed
Animatrice

Mr. Mohamed Ben Bahmed
Teacher, Kidal

Wadossine Ag Simitalla
Teacher, Mali

Ms. Fama Walet Idal
Kidal

Ms. Samia Slimane
Expert

Mr. José Bengoa
Member of the Working Group on Minorities

Secretariat

Ms. Fiona Blyth-Kubota
Mr. Julian Burger
Ms. Isabell Kempf
Office of the United Nations High Commissioner for Human Rights

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